

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT S. HILLSBURG,

Plaintiff-Appellant,

v

SONDRA R. HILLSBURG,

Defendant-Appellee.

UNPUBLISHED

June 10, 2003

No. 237543

Kalamazoo Circuit Court

LC No. 99-007401-DM

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's judgment of divorce. We affirm.

The trial court divided the parties' accounts, investments and personal property. Taking into consideration plaintiff's desire to retain sole interest in his business ventures, the court ordered plaintiff to pay defendant \$266,189, secured by a note and mortgage on certain real estate, to equalize the division. Also, although stating that it "finds this a weak case for alimony," the trial court awarded defendant \$50 per week for potential needs regarding her kidney problem. It is from this decision that plaintiff appeals.

As his first issue on appeal, plaintiff argues that the trial court erred in valuing certain real estate awarded to him such that it skewed the overall division rendering it inequitable. For the purposes of this appeal, this Court must first review the trial court's findings of fact under the clearly erroneous standard. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). A finding is "clearly erroneous" if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *Pelton v Pelton*, 167 Mich App 22, 25; 421 NW2d 560 (1988). If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks*, supra at 151-152. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Id.* at 152.

Because the parties stipulated that the assets were to be divided evenly, our review is limited to determining if the trial court's valuation of the property was clearly erroneous. Before making a property division, the court must make specific findings on the value of the property being awarded. *McNamara v Horner*, 249 Mich App 177, 185-186; 642 NW2d 385 (2002). It has been established that a court may base its findings on expert testimony, but it is not required to do so. *Lee v Lee*, 191 Mich App 73, 76; 477 NW2d 429 (1991). When parties present

competing testimony regarding value, the trial court has the discretion to make its own findings. *Pelton, supra* at 25-26. Also, the trial court has great latitude in arriving at a valuation and its valuation of a marital asset is not clear error if it is within the range established by the proofs, even if the court miscalculated individual factors. *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994). Moreover, a trial court's calculations when determining valuation need not have mathematical precision if the valuation falls within the range of the proofs presented. *Id.*

The trial court placed a value of \$850,000 on McGillen Avenue Properties' real estate and two buildings (McGillen), out of which plaintiff's principal business, Johnson Poured Walls (Johnson), operates. Although the expert valued the property at issue at \$590,000, there was evidence on the record to support of a value in excess of this amount. Specifically, the total cost of the buildings and land at issue was \$1,142,000. If the \$283,482 liability owed to Johnson by McGillen is subtracted from this amount, the net value of McGillen would be \$859,018, which is very close to the trial court's valuation of \$850,000. Therefore, we hold that the trial court's valuation was not clearly erroneous.

Defendant opines that the expert appraisal was low based on her comparison of the expert's appraisal of the marital home, the amount plaintiff paid for the property, the elaborate nature of the buildings, the detailed finish work on the buildings, and their prime location. According to *Lee, supra*, a trial court can properly take the opinions of a party under consideration in reaching its determination as to the value of the property at issue. This is especially true in light of the trial court's finding in this case that the appraisal "did not provide a great deal of information in terms of what was on the property, the make-up of the property, the use, the comparable." Based on the discretion afforded the trial courts in valuations, it was within the trial court's discretion to discount the expert's appraisal in this case in favor of other evidence regarding value. Therefore, because the trial court is not required to base its determination on expert testimony and because there was evidence in support of the trial court's ultimate determination, we are not left with a definite and firm conviction that a mistake has been made.

As his second issue on appeal, plaintiff argues that the trial court erred in valuing plaintiff's business interests by failing to deduct liabilities, resulting in inflated valuations that skewed the overall property settlement, making the property division inequitable. Again, because the parties stipulated that the assets were to be divided evenly, our review is limited to determining if the trial court's valuation of the property was clearly erroneous. Plaintiff argues that debts owed to Johnson by related entities were not computed as a debt in determining their value, but were nevertheless counted as income in the valuation of Johnson, thereby increasing its value without correspondingly reducing the value of the related entities. Plaintiff argues that, therefore, there should be a downward adjustment to the values assigned to the affected entities.

There are a number of valuation methods, and some appraisals are based on the average of several methods. Michigan Family Law (2002), § 14.32. The trial court's valuation of Johnson was calculated using the "capitalization of earnings" method. This is regarded as a common approach in valuing closely held businesses in Michigan. Michigan Family Law, *supra* at § 14.42. In this approach, the appraiser attempts to project the future earnings capacity of the business and then capitalizes this projected income stream to determine, in effect, how much capital an investor would be willing to invest in some other investment of comparable risk to generate the same income stream. *Id.* This is accomplished by multiplying the projected

earnings by the capitalization factor. *Id.* It is generally recognized that arriving at this figure requires an appraiser to exercise discretion, adjusting for excess perks for owners or non-business expenses buried in the business. *Id.*

Another method of valuation is the “net-asset method,” also known as the “book value” method, which involves computing the assets of a business and then subtracting the liabilities. *Id.* It appears that plaintiff’s argument is that the trial court should have used the net asset approach to determine the value of Johnson. Specifically, plaintiff argues that “all assets and liabilities must be considered in valuing a business entity” and that from “the value of all assets [must be] subtracted the amount of the outstanding liabilities of the corporation.” However, when determining the value of a closely held businesses, courts are not required to uniformly apply any one specific method of valuation. *Kowalesky v Kowalesky*, 148 Mich App 151, 155, 156 n 1; 384 NW2d 112 (1986). “Rather, this Court will review the method applied by the trial court, and its application of that method, to determine if the trial court’s valuation was clearly erroneous.” *Id.* at 155-156.

The trial testimony indicates that Wilson and Bell, two highly qualified experts, clearly considered corporate liability in their calculations of Johnson’s value and in their comparisons of multiple methods of valuation, including the net asset approach, and determined that the capitalized earnings figure best stated the value of Johnson. These experts stated that had the capitalized earnings value been less than the net asset value in this case, they would have valued the business at its net asset value. Thus, it was within the trial court’s discretion to adopt the experts’ valuation of \$850,000 based on this method. Ultimately, with regard to Johnson, we cannot conclude that the trial court’s valuation constituted clear error under all the circumstances.

Plaintiff also asserts that McGillen owes Johnson \$238,482 for work done by Johnson on the McGillen buildings. Plaintiff contends that the money owed Johnson was not deducted by the trial court from the value of McGillen, but that the \$238,482 was nonetheless included as income to Johnson, even though it had never actually been received. However, based on our foregoing conclusions as to the valuations of Johnson and McGillen, each of which was within the trial court’s discretion, we find that plaintiff’s argument is without merit.

Additionally, plaintiff argues that with respect to West Campus Village, LLC, an entity in which plaintiff and his brother own a sixteen percent minority interest, the \$50,000 investment for the acquisition of plaintiff’s interest was financed by Johnson but never repaid by West Campus Village, LLC, and should therefore be “backed out” of the value of Johnson. However, we reassert that the trial court’s valuation of Johnson was within its discretion, and restate that its assets and liabilities were contemplated and accounted for in the expert’s decision to implement the capitalized earnings method of valuation. Moreover, there is evidence on the record in support of the trial court’s valuation of West Campus Village. Plaintiff invested \$50,000 into the entity, which equals a sixteen percent share in the total apartment complex. Therefore, the \$50,000 value the trial court placed upon the entity was based on facts on the record, and is not clearly erroneous or inequitable. Based on the foregoing, the trial court properly reviewed the evidence presented at trial and reached a result that is not clearly erroneous.

In his third issue on appeal, plaintiff argues that the trial court erred in basing its award of spousal support on an annual income of \$105,000 by plaintiff, when the valuation by the experts assumed a reasonable yearly compensation figure of only \$65,000. Plaintiff contends that the

trial court's decision to base spousal support on an income in excess of \$65,000 constitutes an impermissible "double-dip" because the court counted the excess money toward spousal support and also included it in its ultimate valuation of the business.

The award of alimony is within the trial court's discretion. *Pelton, supra* at 27. The trial court's decision as to alimony must be affirmed unless the appellate court is firmly convinced that it was inequitable. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000). The main objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party and alimony is to be based on what is "just and reasonable" based on the facts of the case. *Id.*

In this case, the trial court awarded defendant \$50 per week in spousal support for a period of five years or until defendant's death or remarriage. We emphasize that the trial court has broad discretion to order spousal support based on the specific facts of each case. *Postema v Postema*, 189 Mich App 89, 99; 471 NW2d 912 (1991). Based on evidence on the record – including: the substantial amount of assets and money at plaintiff's disposal from income; dividends or corporate transactions that benefit him personally; defendant's precarious health condition; and defendant's relinquishment of corporate benefits, such as credit cards for gasoline, fuel oil and auto insurance, that plaintiff will retain – the trial court's findings are not clearly erroneous.

We further find that this award will not likely cause plaintiff undue hardship or impoverish plaintiff, even if based on a \$65,000 income. Plaintiff earns at least \$65,000, compared to defendant's \$45,000. Furthermore, as the trial court found, there is evidence that plaintiff also has "the ability to intentionally maintain his W-2 income at a lower level, yet use corporate assets to his personal benefit, thus maintaining a lower child support and spousal support obligations." Accordingly, it appears that the trial court properly attempted to balance the parties' incomes. Plaintiff has the ability to pay this amount of alimony, which will allow defendant to maintain her prior standard of living and pay some of the debts that she has incurred during the parties' separation. Moreover, the trial court did not err in factoring defendant's health into its decision. Accordingly, the trial court's order of \$50 per week of spousal support was not inequitable.

Affirmed.

/s/ Michael R. Smolenski
/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood